

3. Defendant at all times pertinent hereto directed and controlled all business activities of Kelly Heating & Air Conditioning, including the solicitation for sale and sale of home improvement services.
4. Defendant controlled and directed the business activities and sales conduct of Kelly Heating & Air Conditioning, causing, personally participating in, or ratifying the acts and practices of it.
5. Defendant solicited consumers and accepted payments for the home improvement goods and services within multiple counties in Ohio, including Montgomery County.
6. Defendant solicited and sold home improvement goods and services at the residences of buyers.
7. Defendant does not have a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis.
8. Defendant did not notify consumers of their cancellation rights nor did he provide consumers with a notice of cancellation.
9. Defendant accepted monetary deposits from consumers for the purchase of home improvement goods and services and failed to deliver those goods and services and has refused to refund consumers' deposits or payments.
10. Defendant performed substandard, shoddy, and incomplete work when he did provide home improvement services.
11. After receiving payment, Defendant would sometimes begin to provide contracted services, but often failed to complete the work.

12. Defendant's failure to perform contracted services in a proper manner has resulted in harm to consumers and required the consumers to pay additional money to have the Defendant's work corrected and/or to complete the work Defendant was supposed to do.

CONCLUSIONS OF LAW

1. The actions of the Defendant are in violation of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 *et seq.*, and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 *et seq.*
2. This Court has subject matter jurisdiction over this action pursuant to R.C. 1345.04 because the claims in this Complaint arise from consumer transactions subject to R.C. 1345.01 *et seq.*
3. Venue is proper with this Court, pursuant to Ohio Civ. R. 3(B)(1)-(3), because Defendant resided in, operated his business from, and engaged in the transactions complained of herein in Montgomery County.
4. Defendant is a "supplier," as that term is defined in R.C. 1345.01(C), as he engaged in the business of effecting "consumer transactions" by soliciting consumers for home repair, construction, assembly and/or treatment products for a fee, within the meaning of R.C. 1345.01(A).
5. Defendant is a "seller" engaged in the business of effecting home solicitation sales by soliciting and selling home improvements to "buyers" at the buyers' personal residences in the State of Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.21(A) and (E).
6. Defendant committed unfair and deceptive acts and practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09(A) and the CSPA, R.C. 1345.02(A), by accepting money

from consumers for goods or services and then permitting eight weeks to elapse without making shipment or delivery of the goods or services ordered, making a full refund, advising the consumer of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.

7. Defendant committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing substandard work and then failing to correct such work.
8. Defendant violated the HSSA, R.C. 1345.23(B), by failing to give proper notice to consumers of their right to cancel their contract by a specific date and by failing to give consumers a cancellation form.
9. Such acts or practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 *et seq.* Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

ORDER

It is therefore **ORDERED, ADJUDGED, AND DECREED** that:

1. Plaintiff's request for a Declaratory Judgment is hereby granted as each act or practice of the Defendant violated the CSPA and HSSA as described in the Complaint and in this Order.
2. Defendant, and all persons acting on behalf of him, directly or indirectly, through any corporate or private device, partnership or association, are permanently enjoined from engaging in the acts and practices found by this Court to violate the CSPA and HSSA and from further violating the CSPA and HSSA.

3. Defendant is liable for consumer restitution in the amount of \$31,280.49, to be paid to and distributed by the Ohio Attorney General's Office to the following consumers:

First Name	Last Name	City	Amount
Ruth	Borchers	Dayton	\$299.00
Arnold	Lang	Miamisburg	\$100.00
Mark	Briley	Dayton	\$2,500.00
Gary	Johnson	Dayton	\$769.00
Caroline	Howard	Dayton	\$1,490.00
Zhamal	Mamedov	Dayton	\$6,800.00
Barbara	Martin	Dayton	\$100.00
Amanda	Medley	Troy	\$2,000.00
Jamie	Murray	Dayton	\$256.04
Elizabeth	Nardini	Dayton	\$280.00
Michael	O'Reilly	Dayton	\$577.90
Jontee	Ruffin	Dayton	\$1,300.00
Patricia	Scandrick	Dayton	\$1,000.00
Tamra	Slivinski	Dayton	\$158.00
Robert	Snyder	Miamisburg	\$6,899.00
Tammy	Stritenberger	Tipp City	\$180.00
Kyle	Trousdale	Vandalia	\$460.00
Ruth	Vanderpool	Dayton	\$5,321.55
Christopher	Weir	Fairborn	\$500.00
Jamie	Williams	Englewood	\$290.00

4. Defendant shall pay a civil penalty of \$25,000, pursuant to R.C. 1345.07(D).
5. The Defendant is enjoined from engaging in any consumer transaction as a Supplier in the heating, cooling and/or HVAC business in the State of Ohio until he has satisfied all monetary obligations hereunder.
6. Defendant shall pay all court costs associated with this matter.

IT IS SO ORDERED.

HON. JUDGE LANGER

Prepared by:

/S/ Eric M. Gooding

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Certificate of Service

I hereby certify that on April 5, 2017 electronically filed this document and will serve this document in accordance with Civ. R. 5 on the following once it is signed and executed by the Court:

Daniel William Wells

4960 Silver Arrow

Huber Heights, OH 45424

/S/ Eric M. Gooding

ERIC M. GOODING (0086555)
Assistant Attorney General



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Final Judgment Entry
Case Number: 2016 CV 00621
Case Title: STATE OF OHIO EX REL ATTY GENERAL MICHAEL DEWINE
vs DANIEL WILLIAM WELLS

So Ordered